

111TH CONGRESS
1ST SESSION

H. R. 466

AN ACT

To amend title 38, United States Code, to provide for certain rights and benefits for persons who are absent from positions of employment to receive medical treatment for service-connected disabilities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Wounded Veteran Job
3 Security Act”.

4 **SEC. 2. RIGHTS OF PERSONS WHO RECEIVE TREATMENT**
5 **FOR ILLNESSES, INJURIES, AND DISABIL-**
6 **ITIES INCURRED IN OR AGGRAVATED BY**
7 **SERVICE IN THE UNIFORMED SERVICES.**

8 (a) RIGHTS OF PERSONS WHO RECEIVE TREAT-
9 MENT.—

10 (1) IN GENERAL.—Subchapter II of chapter 43
11 of title 38, United States Code, is amended by add-
12 ing at the end the following new section:

13 **“§ 4320. Rights of persons absent from employment**
14 **for treatment of service-connected dis-**
15 **abilities**

16 “(a) RETENTION.—Subject to subsection (e), a per-
17 son who is absent from a position of employment by rea-
18 son of the receipt of medical treatment for a service-con-
19 nected disability is entitled to be retained by the person’s
20 employer.

21 “(b) SENIORITY.—A person who is absent from em-
22 ployment by reason of the receipt of medical treatment
23 for a service-connected disability and who is entitled to
24 be retained by the person’s employer under subsection (a)
25 is entitled to the seniority and other rights and benefits
26 determined by seniority that the person had on the date

1 of the commencement of such treatment plus the addi-
2 tional seniority and rights and benefits that such person
3 would have attained if the person had remained continu-
4 ously employed.

5 “(c) BENEFITS.—(1) A person who is absent from
6 a position of employment by reason of the receipt of med-
7 ical treatment for a service-connected disability and who
8 is entitled to be retained by the person’s employer under
9 subsection (a) shall be—

10 “(A) deemed to be on furlough or leave of ab-
11 sence while receiving such treatment; and

12 “(B) entitled to such other rights and benefits
13 not determined by seniority as are generally provided
14 by the employer of the person to employees having
15 similar seniority, status, and pay who are on fur-
16 lough or leave of absence under a contract, agree-
17 ment, policy, practice, or plan in effect at the com-
18 mencement of such service or established while such
19 person is so absent.

20 “(2)(A) Subject to subparagraph (C), a person de-
21 scribed in subparagraph (B) is not entitled to rights and
22 benefits under paragraph (1)(B).

23 “(B) A person described in this subparagraph is a
24 person who—

1 “(i) is absent from a position of employment by
2 reason of the receipt of medical treatment for a serv-
3 ice-connected disability; and

4 “(ii) knowingly provides written notice of intent
5 not to return to a position of employment after re-
6 ceiving such treatment.

7 “(C) For the purposes of this paragraph, the em-
8 ployer shall have the burden of proving that a person
9 knowingly provided clear written notice of intent not to
10 return to a position of employment after being absent
11 from employment by reason of the receipt of medical treat-
12 ment and, in doing so, was aware of the specific rights
13 and benefits to be lost under subparagraph (A).

14 “(3) A person deemed to be on furlough or leave of
15 absence under this subsection while receiving medical
16 treatment for a service-connected disability shall not be
17 entitled under this subsection to any benefits to which the
18 person would not otherwise be entitled if the person had
19 remained continuously employed.

20 “(4) Such person may be required to pay the em-
21 ployee cost, if any, of any funded benefit continued pursu-
22 ant to paragraph (1) to the extent other employees on fur-
23 lough or leave of absence are so required.

1 “(5) The entitlement of a person to coverage under
2 a health plan is provided for under section 4317 of this
3 title.

4 “(d) LEAVE.—Any person who is absent from a posi-
5 tion of employment with an employer by reason of the re-
6 ceipt of medical treatment for a service-connected dis-
7 ability shall be permitted, upon request of that person, to
8 use during the period during which the person is so ab-
9 sent, any vacation, annual, medical, or similar leave with
10 pay accrued by the person before the commencement of
11 such period. No employer may require any such person
12 to use vacation, annual, family, medical, or similar leave
13 during such period.

14 “(e) EXCEPTIONS.—(1) An employer is not required
15 to comply with the requirements of this section if—

16 “(A) the employer’s circumstances have so
17 changed as to make such compliance impossible or
18 unreasonable;

19 “(B) such compliance would impose an undue
20 hardship on the employer; or

21 “(C) the employment from which the person is
22 absent by reason of the receipt of medical treatment
23 is for a brief, nonrecurrent period and there is no
24 reasonable expectation that such employment will
25 continue indefinitely or for a significant period.

1 “(2) In any proceeding involving an issue of whether
 2 (A) any compliance referred to in paragraph (1) is impos-
 3 sible or unreasonable because of a change in an employer’s
 4 circumstances, (B) such compliance would impose an
 5 undue hardship on the employer, or (C) the employment
 6 referred to in paragraph (1)(C) is for a brief, nonrecurrent
 7 period and there is no reasonable expectation that such
 8 employment will continue indefinitely or for a significant
 9 period, the employer shall have the burden of proving the
 10 impossibility or unreasonableness, undue hardship, or the
 11 brief or nonrecurrent nature of the employment without
 12 a reasonable expectation of continuing indefinitely or for
 13 a significant period.”.

14 (2) CLERICAL AMENDMENT.—The table of sec-
 15 tions at the beginning of such chapter is amended
 16 by inserting after the item relating to section 4319
 17 the following new item:

“4320. Rights of persons absent from employment for treatment of service-con-
 nected disabilities.”.

18 (b) HEALTH PLAN.—Section 4317 of title 38, United
 19 States Code, is amended by adding at the end the fol-
 20 lowing new subsection:

21 “(c) This section shall apply with respect to a person
 22 who is absent from a position of employment by reason
 23 of the receipt of medical treatment for a service-connected
 24 disability (other than a person described in section

1 4320(c)(2)(B) of this title) on the same basis as a person
 2 who is absent from a position of employment by reason
 3 of service in the uniformed services. In the case of a per-
 4 son who is absent from a position of employment by rea-
 5 son of the receipt of medical treatment for a service-con-
 6 nected disability (other than a person described in section
 7 4320(c)(2)(B) of this title), the period during which the
 8 person is so absent shall be treated as a period of service
 9 in the uniformed services for purposes of this section.”.

10 (c) PROHIBITION OF DISCRIMINATION AND ACTS OF
 11 REPRISAL.—Section 4311 of title 38, United States Code,
 12 is amended—

13 (1) in subsection (a)—

14 (A) by inserting after “uniformed service”
 15 the following: “, or who has an illness, injury,
 16 or disability determined by the Secretary of
 17 Veterans Affairs to have been incurred in or ag-
 18 gravated by such service,”; and

19 (B) by striking “or obligation” and insert-
 20 ing “obligation, or receipt of treatment for that
 21 illness, injury, or disability”; and

22 (2) in subsection (c)—

23 (A) by striking “or obligation for service”
 24 the first time it appears and inserting “obliga-
 25 tion for service, or receipt of treatment for an

1 illness, injury, or disability determined by the
2 Secretary of Veterans Affairs to have been in-
3 curred in or aggravated by service”; and

4 (B) by striking “or obligation for service”
5 the second time it appears and inserting “obli-
6 gation for service, or receipt of treatment”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply with respect to medical treatment
9 received on or after the date of the enactment of this Act.

Passed the House of Representatives June 8, 2009.

Attest:

Clerk.

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